

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

January 2, 2007

**CALL TO PODIUM:**

**Greg Ossont, Director**  
**Planning and Code**  
**Administration**

**RESPONSIBLE STAFF:**

**Fred Felton**  
**Assistant City Manager**

**Greg Ossont, Director**  
**Planning and Code Administration**

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Joint Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
<b>x</b>	Policy Discussion
	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	NA
Advertised	09/20/2006
	09/27/2006
Hearing Date	10/09/2006
Record Held Open	11/02/2006
Re-Opened	11/20-22/2006
Policy Discussion	01/02/2007

**TITLE: Policy Discussion**

**T-377** An Ordinance To Amend Chapter 24 of The City Code Entitled "Zoning," So As To Create New Article XV Entitled, "Adequate Public Facilities," So As To Require That Public Facilities Be Deemed Adequate To Serve Development Which Is Subject To Various Land Use And Development Approvals And To Set Forth Applicable Procedures And Standards For The Determination Thereof

**SUPPORTING BACKGROUND:**

During the October 9, 2006 work session, the Mayor and City Council provided guidance on the draft Adequate Public Facilities Standards for traffic impacts, school capacity, water and sewer, and fire and emergency services.

The draft ordinance addresses school capacity, water and sewer, and fire and emergency services standards; however, due to the level of complexity, the decision was made to handle traffic impact standards through a regulation as authorized by Section 2-10 of the City Code.

The Planning Commission reviewed and discussed the draft ordinance at their November 1<sup>st</sup> and November 15<sup>th</sup> meetings and has recommended that the Mayor and City Council defer action until additional information and clarification is provided.

The Commission also recommended "applicability" language be included in any ordinance and that adequacy of water and sewer be determined prior to development approvals rather than permit approvals. A strike and bold version reviewed by the Commission and the CPC is attached for your review.

Continued...

*Attachments: Index of Memoranda and Exhibits*

**DESIRED OUTCOME:**

**Conduct policy discussion. Two alternative versions of the ordinance are available for consideration (the only difference between the two versions is how capacity is calculated for projects in the MCPS Capital Budget).**

# **MAYOR & COUNCIL AGENDA COVER SHEET**

Continued....

The “Applicability” section has been relocated to the beginning of the Article and clarifies that the ordinance does not apply to any development that has received schematic development approval, preliminary site plan approval or final site plan approval prior to the effective date of the ordinance. Additionally, staff has added language clarifying that any provision of this Article that is contrary to any annexation agreement shall not be applicable.

A key issue that was not resolved during the public hearing was how budgeted, but not built, school capacity is credited. The Rockville APFO gives capacity credit only to projects that are programmed to be built within two years; however, MCPS staff believes this standard is too restrictive and has recommended that the City’s APFO recognize capacity for any project included in the six year MCPS Educational Facilities Master Plan and Capital Improvements Program.

Two alternative ordinances have been attached for the Mayor and City Council’s review. The first version gives school capacity credit for any project contained in the MCPS six year MCPS Educational Facilities Master Plan and Capital Improvements Program. The second version only gives credit for school projects budgeted within a two year timeframe.

## **TWO (2) YEAR VERSION**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE  
ENTITLED “ZONING” SO AS TO CREATE NEW ARTICLE XV  
ENTITLED “ADEQUATE PUBLIC FACILITIES” SO AS TO REQUIRE  
THAT PUBLIC FACILITIES BE DEEMED ADEQUATE  
TO SERVE DEVELOPMENT WHICH IS SUBJECT TO VARIOUS  
LAND USE AND DEVELOPMENT APPROVALS AND TO  
SET FORTH APPLICABLE PROCEDURES AND STANDARDS  
FOR THE DETERMINATION THEREOF

### **TEXT AMENDMENT - T-377**

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, Maryland, in public meeting assembled that Chapter 24 of the City Code (City Zoning Ordinance) is hereby amended to create New Article XV entitled Adequate Public Facilities”, Section 24-243 through Section 24-247 to read as follows:

#### **ARTICLE XV. ADEQUATE PUBLIC FACILITIES**

##### **Sec. 24-243. Purpose and Intent.**

It is the purpose and intent of this Article to:

- (1) Implement the authority granted to the City of Gaithersburg pursuant to Article 66B, §10.01, Md Code Ann.
- (2) Control and manage growth in an orderly, efficient, cohesive and safe manner consistent with the economic and land use planning policies of the City and for the health, safety and welfare of its inhabitants.
- (3) Provide a mechanism and standards to evaluate and ensure that the public facilities hereafter specified are adequate or will be adequate to serve the needs generated by land use development in the development approval process.
- (4) Provide for the phasing or staging of development, conditional approvals including but not limited to requiring provision of public facilities and/or traffic mitigation to ensure the adequacy of public facilities.

- (5) Ensure that premature development does not occur and to require that development approvals are not rendered by an approving authority without a determination of the adequacy of public facilities or that such facilities will be made adequate within the reasonable foreseeable future.

#### **Sec. 24-244. Applicability**

**This Article shall not apply to any development that has received schematic development plan approval, preliminary site plan approval, or final site plan approval prior to the effective date of this ordinance. Additionally, when a property is subject to an annexation agreement, any provision of this Article that is contrary to the annexation agreement shall not be applicable.**

#### **Sec. 24-244. Traffic Impact Study Standards**

Applications for development approvals shall be subject to the requirements set forth in the Gaithersburg Traffic Impact Study Standards, to be adopted by regulation pursuant to Section 2-10 of this Code. No application for development approval shall be approved unless it complies with the requirements of Gaithersburg Traffic Impact Study Standards, or the applicant has obtained a determination from staff that the Standards are not applicable to the applicant's proposed development.

#### **Sec. 24-2456. Adequacy of School Capacity**

With the exception of age restricted development, schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds 110% of Montgomery County Public Schools Program Capacity two (2) years in the future subject to the following:

- (a) The program capacity for each school attended by Gaithersburg residents is determined annually by the Superintendent of Montgomery County Public Schools and reported to the Board of Education in the Communities Facilities Master Plan and Capital Improvements Program.
- (b) Capacity shall be reviewed individually for each elementary school, middle school, and high school. Sharing of capacity between schools shall not be permitted.
- (c) Upon review of the current Communities Facilities Master Plan and Capital Improvements Program, the City Manager shall determine on the first business day of each fiscal year whether or not each public school attended by Gaithersburg residents is forecasted to exceed 110% of programming capacity two (2) years in the future.

**Sec. 24-2467. Water and Sewer Service.**

- (a) **Water supply.** Development that would create a total water demand that would exceed available supply less an adequate reserve for fire-flow shall not be approved. A minimum of 1,000 gallons per minute shall be deemed adequate **fire-flow** for the purposes of this subsection. Final water supply adequacy shall be confirmed by the Washington Suburban Sanitary Commission (WSSC) prior to the issuance of development ~~permits~~ **approvals**.
- (b) **Sewer Service.** Development that would cause the City to exceed transmission capacity available at Blue Plains Wastewater Treatment Plant, Seneca Wastewater Treatment Plant or other facilities as determined by WSSC shall not be approved. Final sewer transmission capacity shall be confirmed by WSSC prior to the issuance of development ~~permits~~ **approvals**.

**Sec. 24-2478. Fire and Emergency Services.**

- (a) **Fire and emergency response.** 10 minute full response availability shall be provided for all proposed development. A full response time is defined as the time required for receiving, processing, and traveling to the site of an emergency call from at least 2 stations. Fire and rescue stations included and receiving funding in the Montgomery County Capital Improvements Program (CIP) shall be countable.

ADOPTED this 2<sup>nd</sup> day of January, 2007 by the City Council of Gaithersburg, Maryland.

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SIDNEY A. KATZ, MAYOR  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 2<sup>nd</sup> day of January, 2007, APPROVED by the Mayor of the City of Gaithersburg, Maryland, this 2<sup>nd</sup> day of January.

THIS IS TO CERTIFY that the foregoing emergency ordinance was adopted by the City Council of Gaithersburg, in public meeting assemble, on the 2<sup>nd</sup> day of January, 2007 and that the same was approved by the Mayor of the City of Gaithersburg on the 2<sup>nd</sup> day of January, 2007. This Ordinance will become effective on the 22<sup>nd</sup> day of January, 2007.

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David B. Humpton, City Manager

## **SIX (6) YEAR VERSION**

ORDINANCE NO. \_\_\_\_\_

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ENTITLED “ZONING” SO AS TO CREATE NEW ARTICLE XV  
ENTITLED “ADEQUATE PUBLIC FACILITIES” SO AS TO REQUIRE  
THAT PUBLIC FACILITIES BE DEEMED ADEQUATE  
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- (2) Control and manage growth in an orderly, efficient, cohesive and safe manner consistent with the economic and land use planning policies of the City and for the health, safety and welfare of its inhabitants.
- (3) Provide a mechanism and standards to evaluate and ensure that the public facilities hereafter specified are adequate or will be adequate to serve the needs generated by land use development in the development approval process.
- (4) Provide for the phasing or staging of development, conditional approvals including but not limited to requiring provision of public facilities and/or traffic mitigation to ensure the adequacy of public facilities.

- (5) Ensure that premature development does not occur and to require that development approvals are not rendered by an approving authority without a determination of the adequacy of public facilities or that such facilities will be made adequate within the reasonable foreseeable future.

#### **Sec. 24-244. Applicability**

**This Article shall not apply to any development that has received schematic development plan approval, preliminary site plan approval, or final site plan approval prior to the effective date of this ordinance. Additionally, when a property is subject to an annexation agreement, any provision of this Article that is contrary to the annexation agreement shall not be applicable.**

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- (a) The program capacity for each school attended by Gaithersburg residents is determined annually by the Superintendent of Montgomery County Public Schools and reported to the Board of Education in the Communities Facilities Master Plan and Capital Improvements Program.
- (b) Capacity shall be reviewed individually for each elementary school, middle school, and high school. Sharing of capacity between schools shall not be permitted.
- (c) Upon review of the current Communities Facilities Master Plan and Capital Improvements Program, the City Manager shall determine on the first business day of each fiscal year whether or not each public school attended by Gaithersburg residents is forecasted to exceed 110% of programming capacity six (6) years in the future.



**Sec. 24-2467. Water and Sewer Service.**

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ADOPTED this 2<sup>nd</sup> day of January, 2007 by the City Council of Gaithersburg, Maryland.

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SIDNEY A. KATZ, MAYOR  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 2<sup>nd</sup> day of January, 2007, APPROVED by the Mayor of the City of Gaithersburg, Maryland, this 22<sup>nd</sup> day of January, 2007.

THIS IS TO CERTIFY that the foregoing emergency ordinance was adopted by the City Council of Gaithersburg, in public meeting assemble, on the 18<sup>th</sup> day of December, 2006 and that the same was approved by the Mayor of the City of Gaithersburg on the 2<sup>nd</sup> day of January, 2007. This Ordinance will become effective on the 22<sup>nd</sup> day of January, 2007.

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David B. Humpton, City Manager

## INDEX OF MEMORANDA

### Adequate Public Facilities Ordinance

T-377

JPH 10/9/2006

1. Application
2. Draft Ordinance
3. Report by *The National Center for Smart Growth Research and Education University of Maryland* for the *Home Builders Association of Maryland* and the *Maryland National Capital Building Industry Association*, dated 4/20/2006
4. Letter requesting legal ad on the 09/20 and 09/27/2006, issues of the *Gaithersburg Gazette*
5. Certified Legal Ad as it appeared in the *Gaithersburg Gazette*
6. M&C Cover for the Joint Public Hearing on 10/9/2006
7. **Email communication dated 10/12/2006 from Linda Draghici, 202 Little Quarry Road, Gaithersburg, MD 20878, LDraghici@vetapp.gov**
8. **Email communication dated 10/11/2006 from Sharon Cantrell, 101 Beckwith Street, Gaithersburg, MD 20878, SharonCCantrell@aol.com**
9. **Email communication dated 10/11/2006 from Shannon Kohan, 505 Kersten Street, Gaithersburg, MD 20878, shannonk58@comcast.net**
10. **Email communication dated 10/11/2006 from Wendy Streight, 518 Chestertown Street, Gaithersburg, MD 20878, jimstr8@erols.com**
11. **Email communication dated 10/11/2006 from Terri Nuccio-Youngs and Dan Youngs, 922 Pointer Ridge Drive, Gaithersburg, MD 20878, tdmnyoungs@comcast.net**
12. **Email communication dated 10/11/2006 from Elizabeth Sander, 946 Main Street, Gaithersburg, MD 20878, lizsander@verizon.net**
13. **Email communication dated 10/11/2006 from Claudia Salzberg, 147 Little Quarry Road, Gaithersburg, MD 20878, claudia\_salzberg@yahoo.com**
14. **Email communication dated 10/12/2006 from Marissa Wills, 12429 Triple Crown Road, Gaithersburg, 20878, Marissa.Wills@montgomerycountymd.gov**
15. **Email communication dated 10/11/2006 from Helen Xu, 98 Golden Ash Way, Gaithersburg, MD 20878, helen.xu@verizon.net**
16. **Email communication dated 10/11.2006 from Kim Skimmons, 633 Kent Oaks Way, Gaithersburg, MD 20878, kimskim1@yahoo.com**

17. Email communication dated 10/13/2006 from Sharon Cole, 12113 Sheets Farm Road, Gaithersburg, MD 20878, sharonfcole@msn.com
18. Email communication dated 10/12/2006 from Marion Perry, m@hperry.com
19. Email communication dated 10/13/2006 from Josephine Baiamonte Capraro, 1233 Quince Valley Drive, Gaithersburg, MD 20878, jbaiamonte@strtrade.com
20. Email communication dated 10/13/2006 from Bonnie Lawhorn, 410 Bostwick Lane, Gaithersburg, MD 20878, Bonnie@BMDLawhorn.com
21. Email communication dated 10/13/2006 from Eric Kessler, 415 Danbridge Street, Gaithersburg, MD 20878, Eric.Kessler@jhuapl.edu
22. Email communication dated 10/13/2006 from Ellen Youstra, 4 Flameleaf Court, Gaithersburg, MD 20878, eyoustra@radix.net
23. Email communication dated 10/13/2006 from Sandy Liu and Family, 12112 Hidden Brook Terrace, Gaithersburg, MD 20878, sandyrliu@yahoo.com
24. Email communication dated 10/13/2006 from Elisa Thibeau, Elisabeth.thibeau@comcast.net and Jud Ashman, 46 Napa Valley Road
25. Email communication dated 10/13/2006 from Paul Booth, paulb210@verizon.net
26. Email communication dated 10/13/2006 from Carol Hayes, 14713 Native Dancer Road, North Potomac 20878, Carol\_Hayes@freddiemac.com
27. Email communication dated 10/13/2006 from Kathryn B. Abbett, 12539 Carrington Hill Drive, Gaithersburg, MD 20878, Kathy@finadvinc.com
28. Email communication dated 10/13/2005 from Ana Maria Segura, 1034 West Side Drive, Gaithersburg, MD 20878, tejadagirl10@yahoo.com
29. Email communication dated 10/13/2006 from Lily Pan, 12313 Pissaro Drive, Gaithersburg, MD 20878, pan\_lily@yahoo.com
30. Email communication dated 10/13/2006 from Alicia Newlands, 12346 Sweetbough Court, mela63@aol.com
31. Email communication dated 10/13/2006 from Laurie Stone, 15104 Whitetail Way, Darnestown, MD 20878, maystones2@aol.com
32. Email communication dated 10/16/2006 from Brian Roberts, 310 Chestnut Hill Street, Gaithersburg, MD 20878
33. Email communication dated 10/16/2006 from Amy Forrester, 131 Upshire Circle, Gaithersburg, MD 20878, aforrester@CSA.com
34. Email communication dated 10/16/2006 from Carolyn Newton, 126666 Granite Ridge Drive, North Potomac, Carolyn.Newton@montgomerycountymd.gov

35. Email communication dated 10/16/2006 from Rhonda Gold, 105 Canfield Hill Drive, Gaithersburg, MD 20878, rgold@naph.org
36. Email communication dated 10/19/2006 from Donna Reeve, 15460 Peach Leaf Drive, Gaithersburg, MD 20878, nightwoman32@yahoo.com
37. Email communication dated 10/23/2006 from Scott Wallace, inbox@linowes-law.com with Attachments: Letter and Annexation Agreement (listed below – Exh. 38)
38. Letter from Scott Wallace, Esq., Linowes and Blocher, 7200 Wisconsin Avenue #800, Bethesda, MD 20814-4842, to M&C, RE: Boston Properties – Washingtonian North, dated 10/23/2006 and Annexation Agreement
39. Email from Barbara Sears, Esq., bsears@linowes-Law.com, Linowes and Blocher, 7200 Wisconsin Avenue #800, Bethesda, MD 20814-4842, with Attachments: 3 Letters listed below (Exhibits 40, 41, 42)
40. Letter from Barbara Sears, Esq. to M&C, RE: Hidden Creek I – Properties subject to annexation agreements, dated 10/24/2006
41. Letter from Barbara Sears, Esq. to M&C, RE: Crown Village: Properties subject to annexation agreements, dated 10/24/2006
42. Letter from Barbara Sears, Esq. to M&C, RE: MR 270 NMD: Properties subject to annexation agreements, dated 10/24/2006
43. Labels of people that were notified of the PC's Recommendation to the M&C by Agenda of the PC 11/1/2006 Meeting and addresses of people notified by email.
44. Letter from Barbara Sears, Esq. to M&C, RE: Annexation Agreements for Crown Property, Hidden Creek Property, and IBM Property, dated 10/25/2006, with attached agreements as listed below:
45. Annexation Agreement for Crown Village Property (X-182) (A hard copy of this document is not attached. It may be viewed on the web at [www.gaithersburgmd.gov/agenda](http://www.gaithersburgmd.gov/agenda). If you would like a paper copy, please contact Fred Felton.
46. Annexation Agreement for Hidden Creek Property (X-96), with 1<sup>st</sup> and 2<sup>nd</sup> Addend (A hard copy of this document is not attached. It may be viewed on the web at [www.gaithersburgmd.gov/agenda](http://www.gaithersburgmd.gov/agenda). If you would like a paper copy, please contact Fred Felton.
47. Annexation Agreement for IBM/MR 270 Property (X-161), with 1<sup>st</sup> and 2<sup>nd</sup> Amendments (A hard copy of this document is not attached. It may be viewed on the web at [www.gaithersburgmd.gov/agenda](http://www.gaithersburgmd.gov/agenda). If you would like a paper copy, please contact Fred Felton.
48. Letter from Lisa Torvik, PTA President, Thurgood Marshall Elementary School, 12260 McDonald Chapel Drive, Gaithersburg, MD 20878, RE: Support of 2-Year Standard for School Capacity

49. M&C Cover Sheet for 07/24/2006 Joint Work Session:  
Water Supply & Sewer Service;  
Fire & Emergency Service Protection; and  
Schools Test
50. Letter from Bruce Crispell, Director of Long Range Planning dated October 27, 2006
- 50A. Memorandum from Greg Ossont to Fred Felton regarding MCFRS response times.
51. Cover Sheet and background for Planning Commission recommendation dated November 1, 2006.
52. Maryland Department of Planning, Models and Guidelines #24
53. Communication from Planning Commission (CPC) with Draft ordinance revised per Commission's guidance dated November 15, 2006.
54. Letter from Jody Kline, Miller, Miller and Canby dated November 22, 2006.